



Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 595

IN THE MATTER
OF
WILLIAM R. SHEMETH, III

DISPOSITION AGREEMENT

The State Ethics Commission ("the Commission") and William R. Shemeth, ("Shemeth") enter into this Disposition Agreement ("Agreement") pursuant to Section 5 of the Commission's *Enforcement Procedures*. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On January 13, 1999, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Shemeth. The Commission has concluded its inquiry and, on September 15, 1999, found reasonable cause to believe that Shemeth violated G.L. c. 268A.

The Commission and Shemeth now agree to the following findings of fact and conclusions of law:

1. Shemeth was, during the time relevant, a member of the Spencer Board of Selectmen.^{1/} As such, he was a municipal employee as that term is defined in G.L. c. 268A, §1.
2. The selectmen are the appointing authority for the police officers.^{2/} Shemeth, in his capacity as selectman, participates and/or is responsible for disciplinary action over police officers.
3. Shemeth is also an attorney engaged in the private practice of law.
4. In 1991, Shemeth contracted with the Worcester Bar Advocates ("WBA") to represent indigent defendants. Shemeth received compensation from the court for the legal services he provided.^{3/}
5. Between 1994 and 1998, as a public defender, Shemeth was assigned approximately 50 cases involving defendants who were investigated and/ or arrested by Spencer police officers. Several of these cases resulted in Shemeth cross-examining Spencer police officers in court.
6. In July 1994, the WBA assigned Shemeth to represent the defendant in the case of *Commonwealth v. Andrews* (Docket no. 9469CR646). The defendant was charged with assault and battery on his girlfriend, being a disorderly person, two counts of assault and battery on a police officer^{4/} and two counts of malicious destruction of property (damage done to a police cruiser estimated at a cost of \$485.60 to repair).

7. Shemeth, in his representation of the defendant, submitted to the court a tender of plea to resolve the case. The tender suggested a plea arrangement which included restitution to the town for damage done to the police cruiser. The court, however, rejected this tender of plea.

8. Upon this rejection, the defendant elected to have the matter heard before a jury. As a result of a subsequent pretrial conference, a plea agreement was ultimately agreed upon by which the defendant was found guilty of all counts and ordered to serve two years in the house of correction. No restitution was requested or ordered.

9. Section 17(a) of G.L. c. 268A prohibits a municipal employee from directly or indirectly receiving compensation from anyone other than the municipality in relation to a particular matter^{5/} in which the municipality is a party or has a direct and substantial interest.

10. Section 17(c) of G.L. c. 268A prohibits a municipal employee from acting as agent for anyone other than the municipality in connection with a particular matter in which the municipality is a party or has a direct and substantial interest.

11. As a judicial proceeding, the case of *Commonwealth v. Andrews* was a particular matter.

12. Where charges alleged in *Commonwealth v. Andrews* involved damage done to a police cruiser amounting to \$485.60 and assault and battery on a police officer, the town had a direct and substantial interest in that criminal proceeding.^{6/}

13. Shemeth represented the defendant in *Commonwealth v. Andrews*. Thus, he acted as attorney for someone other than the town in connection with a particular matter in which the town had a direct and substantial interest. By doing so, Shemeth violated §17(c).

14. Shemeth received compensation for representing the defendant in *Commonwealth v. Andrews*. Thus, he received compensation from someone other than the town in relation to a particular matter in which the town had a direct and substantial interest. By doing so, Shemeth violated §17(a).

In view of the foregoing violations of G.L. c. 268A by Shemeth, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Shemeth:

(1) that Shemeth pay to the Commission the sum of five hundred dollars (\$500) as a civil penalty for violating G.L. c. 268A, §17(a) and (c);

(2) that Shemeth pay to the Town of Spencer the sum of four hundred eighty five dollars and sixty cents (\$485.60) for the damages done to the police cruiser; and

(3) that Shemeth waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: September 28, 1999

1/Shemeth was elected to the Board of Selectmen in May 1994 and served until May 1998.

2/In 1945, Spencer accepted c. 41, §97 (Police departments; establishment) and in 1980 accepted c. 41, §97A (Police departments; chief of police; powers and duties).

Section 97 provides:

In towns which accept this section or have accepted corresponding provisions of earlier laws there shall be a police department established under the direction of the selectmen, who shall appoint a chief of police and such other police officers as they deem necessary, and fix their compensation in an amount not in the aggregate exceeding the annual appropriation therefor. In any such town in which such appointments are not subject to chapter thirty-one, they shall be made annually or for a term of years not exceeding three years, as the selectmen shall determine, and the selectmen may remove such chief or other officers for cause at any time during such appointment after a hearing.

3/In 1998, Shemeth decided not to renew his contract with the WBA because of possible conflicts of interest.

4/No permanent or temporary disability claims were filed by any police officer for any alleged injuries received in connection with the above-described assault and batteries.

5/“Particular matter” means any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. G.L. c. 268A, §1(k).

6/As the Commission has recently stated, a municipality has a direct and substantial interest in a particular matter at least where that legal matter affects its legal rights or liabilities, pecuniary interest, property interest or involves a proceeding that the municipality would have a stake in the outcome. See *EC-COI-97-2*. Moreover, a criminal proceeding involving an assault and battery on one or more of its police officers could well give the town a “significant interest” in the matter even though that interest is neither financial nor proprietary. See *EC-COI-88-7*.